IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL
Writ Petition No. 4449 of 2001 (M/S)
(Old CMWP No. 24 of 1993)

U.P. State Road Transport Corporation, Haldwani, District Nainital through Regional Manager.

.....… Petitioner.

Versus

1. State of U.P.
2. Deputy Labour Commissioner, Kumaon Region, Haldwani.
3. Presiding Officer, Labour Court, Haldwani, Nainital.
4. Kishan Pal Singh, son of Ram Pal Singh Vishtha, ex-fitter, House No. 339 Avas Vikas Haldwani, Nainital.

…..Respondents.

Sri Ramji Srivastava, learned counsel for the petitioner-UPSRTC.
Sri Gopal Narain Srivastava, Brief Holder for the State, learned counsel for the respondents-State.

Dated May 15, 2007.

Hon'ble B.S.Verma, J.

The petitioner has filed the present writ petitioner for issue a writ, order or direction is the nature of certiorari quashing the Reference Order dated 14-5-1991 (Annexure III) passed by the respondent no.2. Prayer for writ of certiorari has also been made quashing the proceedings initiated by respondent no.3 pursuant to the reference order dated 14.5.1991 in Adjudication Case No. 81 of 1991. The petitioner has also prayed for issue a writ in the nature of prohibition restraining the respondent no.3 from proceeding further in the said adjudication case.

The main contention as raised in the writ petition is that the power to make a reference lies with the State Government under Section 4-K read with Section 11-A of the U.P. Industrial Disputes Act ***(for short the Act)*** and on this ground, the writ petition is liable to be allowed.

Learned Brief Holder for the State Sri Gopal Narain Srivastava, has submitted that the power has been delegated to the

Deputy Labour Commissioner under the provisions of Section 11-A of the said Act. Learned Brief Holder for the State further submitted that the scope of Section 11-A of the Act has been dealt with by the Allahabad High Court in the case of ***Kishan Cooperative Sugar Factory Ltd. Sarsawa, District Saharanpur Vs. State of U.P. and others [(1998) 2 UPLBEC, 1235],*** wherein it was held in paragraph 6 of the judgment that ***"The state Government is competent to delegate the power to the Deputy Labour Commissioner and since the Deputy Labour Commissioner enjoyed the powers of conciliation proceedings, he was competent to refer the matter."***

Section 11-A of the U.P. Industrial Disputes Act reads as under:-

"11-A. Delegation of power- *The State Government may by making notification in the official gazette direct that any power exercisable by it under this Act or rules made thereunder shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction be exercisable also by such officers or authority subordinate to the State Government as may be specified in the notification.*

The Allahabad High Court while dealing with the provisions of Sections 4-K and 11-A of the Act, in an earlier decision in the case of ***Manager Chitra Talkies Vs. The Cinema Staff Union [1963 (7), F.L.R., page 26],*** wherein it was observed that "the contention urged on behalf of the petitioners is that Section 4-K provides for two things. In the first place it enjoins a duty on the State Government to be satisfied about the existence of or apprehension about an industrial dispute. Then it confers a power to refer the dispute or any matter connected with or relevant to the dispute connected with or relevant to the dispute to a labour court. It is urged that Section 11-A empowers the Government only to delegate the power mentioned in Section 4-K and not the duty mentioned in that section. That duty must be performed by

the Government itself. It cannot delegate to a subordinate officer the duty to be satisfied about of an industrial dispute." It was held that ***"from whatever point of view we may look at the matter therefore, there is no substance in the contention that the Government has no authority to delegate its powers under Section 4-K of the Act to the Deputy Labour Commissioner under Section 11-A of the Act."***

Learned Brief Holder for the State Sri Gopal Narain Srivastava has submitted that the power had been delegated by Notification No. 2513 (H.I.) 36-2-155 (S.M.)/90 dated 29-8-1990 and a reference to the Notification has been made by the Deputy Labour Commissioner Haldwani in his reference letter, Annexure No.III itself.

Having considered the submissions made by the learned counsel for the State as well as the law laid down by the Allahabad High Court I am of the considered view that the facts of the present case are squarely covered by the judgment of the Allahabad High Court in the case of ***Kishan Cooperative Sugar Factory Ltd. Sarsawa*** (supra) and ***Manager Chitra Talkies*** (supra). The Deputy Labour Commissioner Haldwani was fully competent to make the reference in question in view of the provisions of Section 4-K read with Section 11-A of the Act. The submissions made by the learned counsel for the petitioner have no force. Accordingly, the writ petition is devoid of merit and is liable to be dismissed at the threshold.

The writ petition is dismissed in limine.

All applications stand disposed of.

(B.S.Verma, J.)

RCP